

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

DEVON KNOX,	:
Plaintiff	:
v.	: Case No. 3:11-cv-135-KRG-KAP
JOHN DOE, WARDEN, S.C.I.	:
HOUTZDALE, <u>et al.</u> ,	:
Defendants	:

Report and Recommendation

Recommendation

Plaintiff Knox filed a timely motion for reconsideration of the dismissal of his amended complaint, see Fed.R.Civ.P. 59(e). docket no. 11. The motion should be denied.

Report

Knox alleged that when he was at S.C.I. Houtzdale he unsuccessfully sought protective custody from unspecified inmates in April 2009, and that in July 2009, he was the victim of an opportunistic attack by an unknown inmate who struck and seriously injured Knox with a baseball bat when the corrections officers in the south yard left to respond to a disturbance in the north yard. I found the original complaint inadequate to allege deliberate indifference, and the court found the amendment to the complaint similarly inadequate. Knox's motion for reconsideration presents no new allegations of fact, and rehashes the arguments previously made.

Under Grayson v. Mayview State Hospital, 293 F.3d 103 (3d Cir.2002), an inmate is to be given leave to amend his complaint unless it would be "futile." Grayson did not explain what "futile"

meant, but clearly "futile" does not mean that no possible additional allegations would state a claim, because, for instance, Knox could conceivably allege additional facts that would amount to a claim that defendants infringed on a copyright he had been issued. For Grayson to make sense, "futile" must mean that no allegations explaining or merely elaborating on the existing insufficient allegations would suffice to state a claim. Knox, despite two chances, has not made any allegations that would move the defendants' alleged conduct in April 2009 or July 2009 from negligent to deliberately indifferent. The motion to reconsider should be denied.

Pursuant to 28 U.S.C. § 636(b)(1), the parties are given notice that they have fourteen days to serve and file written objections to this Report and Recommendation.

DATE: March 6, 2012

Keith A. Pesto
Keith A. Pesto,
United States Magistrate Judge

Notice to counsel of record by ECF and by U.S. Mail to:

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